

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.M.BABU

FRIDAY, THE 10TH DAY OF FEBRUARY 2017/21ST MAGHA, 1938

CrI.MC.No. 180 of 2013

CC 354/2008 of J.M.F.C-I,NEDUMANGAD

PETITIONER(S):

REJILAL, AGED 27 YEARS,
S/O.LALU RESIDING AT LAL BHAVAN PASUVILA KODUVAZHANNUR DESOM
KODUVAZHANNUR VILLAGE THIRUVANANTHAPURAM

BY ADVS.SRI.S.RAJEEV
SRI.K.K.DHEERENDRAKRISHNAN

RESPONDENT(S):

STATE OF KERALA
REP.BY PUBLIC PROSECUTOR HIGH COURT OF KERALA ERNAKULAM 682031
(CRIME NO 506/2007 OF VENJARAMOODU POLICE STATION
THIRUVANANTHAPURAM DISTRICT

ADDL.R2

DARSHANA DEV,
D/O SALILA, SILI BHAVAN,
AANACHAL, KALAVACHAL DESOM,
VAMANAPURAM VILLAGE,
VENJHARAMOOD, NEDUMANGAD,
THIRUVANANTHAPURAM - 695 607
(Impleaded as per order dated 27.2.2013 in CrI.M.C.1850/13

BY PUBLIC PROSECUTOR RAMESH CHAND

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 1.12.2016, THE
COURT ON 10-02-2017 PASSED THE FOLLOWING:

Crl.MC.No. 180 of 2013

APPENDIX

ANNEXURE

I- CERTIFIED COPY OF THE FINAL REPORT IN CC.NO.354/2008 ON THE FILE OF THE JUDICIAL FIRST CLASS MAGISTRATE-I, NEDUMANGAD

//True copy//

P.S to Judge

A.M.BABU, J.

Crl.M.C.180 of 2013

Dated : 10th February, 2017

ORDER

1.Petitioner is the accused in C.C.354/2008. The case is pending before the Judicial Magistrate-I, First Class, Nedumangad. The petitioner seeks to quash the proceedings in C.C 354/2008. The relief is sought under section 482 of the Cr.P.C.

2.Prosecution case is as follows : On the nights of 17-18/8/2007 and 22-23/8/2007 the petitioner had sexual intercourse with the first informant. He enticed her with his promise to marry her to have sexual intercourse with her. But he did not marry her. He thus committed offences under sections 420 and 493 of the IPC.

3.The first informant was impleaded as the additional 2nd respondent. She died even before she was impleaded. A copy

of her death certificate is incorporated in the file of this case.

4. Heard the learned counsel for the petitioner and the learned Public Prosecutor.

5. The records in C.C.354/2008 have been called for and perused.

6. The 2nd respondent gave a statement to the police under section 154 of the Cr.P.C. FIR was registered. The police investigated the case and filed final report. The learned Magistrate took cognizance of the offences punishable under sections 420 and 493 of the IPC. It is doubtful whether the Magistrate framed any charge. The charge is not seen in the case records. It is not indexed also. However, the learned Magistrate recorded on the proceedings paper that charges were framed against the petitioner under sections 420 and 493 of the IPC. The petitioner's plea of not guilty was

recorded. That paper is available in the case records and is indexed also.

7. The learned counsel for the petitioner submitted that the learned Magistrate should not have taken cognizance of the offence under section 493 of the IPC upon a police report. Section 198(1) of the Cr.P.C provides that no court shall take cognizance of an offence punishable under Chapter XX of the IPC except upon a complaint made by some person aggrieved by the offence. Section 493 comes under Chapter XX of the IPC. Therefore cognizance could be taken only upon a complaint. Section 2(d) of the Cr.P.C which defines 'complaint' specifically excludes a police report. It appears that the learned Magistrate could not have taken cognizance of an offence punishable under section 493 of the IPC upon the police report in this case. It also appears, therefore, that the petitioner is not liable to undergo trial for the offence under section 493 of the IPC. I shall give my final word on this matter later.

8. Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief shall be liable for punishment under section 493 of the IPC. The 2nd respondent was an unmarried woman. She was not lawfully married to the petitioner. He allegedly had sexual intercourse with her two or three times on the night of 17-18/8/2007 and twice on the night of 22-23/8/2007. But this is not sufficient to attract section 493 IPC. The section is attracted only if he by deceit caused her to believe herself to be lawfully married to him. The prosecution has no such case. Its case is only that he promised to marry her and had sexual intercourse with her. No paper in the case records including the FI statement suggests that the 2nd respondent ever had a belief that she was lawfully married to the petitioner, much less at the time of the incidents alleged. Section 493 IPC is not attracted to try the petitioner for that offence.

9. There has been no delivery of any property or involvement of any valuable security. There is no such allegation in the FI statement or in any other paper in the case records. Therefore section 420 of the IPC is also not attracted.

10. The learned Public Prosecutor argued that the petitioner could be charged and tried under section 417 of the IPC. But the prosecution case does not suggest any 'cheating' as defined in section 415 of the IPC. The statements in the FI statement go as under; (i) the petitioner and the 2nd respondent were in deep love, (ii) he promised to marry her after the Onam festival in 2007, (iii) at about 10.00 pm on 17.8.2007 and at the same time on 22.8.2007 she was taken to his house by him on his bike, (iv) he had sexual intercourse with her at his house on those nights more than once and (v) he dropped her at her house at 5.00 am on 18.8.2007 and at 5.00 am on 23.8.2007. The prosecution case does not suggest that the petitioner never had an

intention to marry the 2nd respondent. Nor does the prosecution allege that he had sexual intercourse with her without any intention to marry her. Going by her FI statement and her mother's statement under section 161 Cr.P.C, the mother of the petitioner was the person who stood in the way of the marriage being conducted. It is alleged that the petitioner's mother had a demand that the property of the mother of the 2nd respondent should be transferred. It is not clear from the case records whether the demand was to transfer the property to the petitioner or to the 2nd respondent. The mother of the 2nd respondent in her statement given under section 161 of the Cr.P.C stated that the petitioner became reluctant to marry the 2nd respondent because of the attitude of his mother demanding transfer of the property. The evidence collected by the investigating officer does not disclose the intention of the petitioner to cheat the 2nd respondent. The allegations against the petitioner do not come within the definition in section 415 of the IPC. Therefore section 417 IPC is also not attracted.

11.The prosecution has no case to take to trial. Neither section 493 IPC nor section 420 IPC is attracted. So is section 417 IPC. Section 198 (1) of the Cr.P.C bars taking of cognizance of an offence punishable under Chapter XX of the IPC upon a police report. I may now refer to **State of Orissa v. Sharat Chandra Sahu (AIR 1997 SC 1)** and **Ushaben v. Kishorbhai Chunilal Talpada ((2012) 6 SCC 353)**. In those cases reports under section 173 (2) Cr.P.C were filed alleging commission of offences under sections 494 and 498A of the IPC. Section 494 comes under Chapter XX of the IPC. In both the decisions the Hon'ble Supreme Court considered and interpreted sections 2(d), 155 and 198 of the Cr.P.C. Section 155(4) of the Cr.P.C provides that where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable. The Supreme court holds in both the decisions to the effect that in view of section 155(4) of the Cr.P.C, section

198 (1) Cr.P.C does not stand in the way of the Magistrate taking cognizance of an offence under section 494 IPC along with Section 498A IPC, which is cognizable. It should be noted that the reported cases were cases where there were materials against the respective accused persons to take cognizance of a cognizable offence, viz : section 498A of the IPC. The Apex court in **Ushaben**'s case (supra) has stated at paragraph 13 of the judgment that if a complaint contains allegations about commission of offence under section 498A of the IPC which is a cognizable offence, apart from allegations about the commission of offence under section 494 of the IPC, the court can take cognizance thereof even on a police report. That is not the case in the present case. Here section 420 IPC, a cognizable offence, was shown in the FIR and the charge-sheet without any basis whatsoever. You cannot bypass section 198 of the Cr.P.C by simply adding a cognizable offence in the FIR and the charge-sheet without any basis as was done in the present case. Section 420 IPC was shown in the present case only to get over the bar under

section 198 (1) of the Cr.P.C. That 'smartness' cannot be permitted. Magistrates shall be very careful and cautious when they are called upon to take cognizance of an offence falling under Chapter XX of the IPC upon a police report. The Magistrate shall ascertain whether the investigating officer included a cognizable offence in the FIR, charge-sheet et *cetera* only to get over the bar under section 198 (1) of the Cr.P.C. It is crystal clear in the present case that section 420 of the IPC is shown only to bypass the bar under section 198 (1) of the Cr.P.C.

In the result, the Crl.M.C is allowed. The entire proceedings in C.C.354/2008 on the file of the Court of the Judicial Magistrate-I, First Class, Nedumangad is quashed.

Sd/-

A.M.BABU
Judge

Mrcs/2.2.2017

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P.S to Judge